

1 [Cooperative Agreement - San Francisco Bay Area Rapid Transit District]

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3 **Resolution approving a Cooperative Agreement between the City and County of San**
4 **Francisco and the San Francisco Bay Area Rapid Transit District (BART), through its**
5 **Port Commission, authorizing BART to install, use, and maintain security barriers on**
6 **and under the Ferry Plaza Platform, on the east side of the Ferry Building along the**
7 **Embarcadero, for a term of 66 years, subject to BART's right to request an extension**
8 **before the end of the 64th year of the term.**

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10 WHEREAS, The San Francisco Bay Area Rapid Transit District ("BART") proposes to
11 construct within the boundaries of the San Francisco Bay and on and under the Ferry Plaza
12 Platform enhanced security barriers around the BART transit facilities to protect its continuing
13 use and restrict access in the proximity of the facilities;

14 WHEREAS, The Port of San Francisco and BART have negotiated a cooperative
15 agreement authorizing BART to install, use and maintain the security barriers on and under
16 the Ferry Plaza Platform, on the east side of the Ferry Building along The Embarcadero, for a
17 term of 66 years (the "Cooperative Agreement"); and

18 WHEREAS, The Cooperative Agreement grants BART the right to request an
19 extension of the term of the agreement before the end of the 64th year of the term and
20 obligates the Port to negotiate the extension in good faith with BART; and

21 WHEREAS, The Cooperative Agreement does not require BART to pay the Port a fee
22 for the use of Port property; however, the barriers will benefit the trust and the City by
23 protecting the public and BART's public transit system, assuring public transit to the waterfront
24 and the City; and

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1 WHEREAS, The BART barriers will not require the expenditure of Port harbor trust or
2 other City revenues; and

3 WHEREAS, In addition to granting BART the right to install the barriers, the
4 Cooperative Agreement requires BART to obtain building permits from the Port for
5 construction of the barriers, be responsible for any and all damages caused by the
6 construction, installation, use, maintenance, repair or relocation of the barriers, and indemnify
7 the City for BART's activities under the Cooperative Agreement; and
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9 WHEREAS, On October 26, 2010, the Port Commission, by Port Resolution No. 10-71
10 approved the Cooperative Agreement, subject to approval by the Board of Supervisors; and

11 WHEREAS, BART has authority to make its own California Environmental Quality Act
12 (CEQA) determinations, and has determined that the proposed surface barriers are
13 categorically exempt from CEQA under Class 15301(f), and the Port and the City Planning
14 Department's Major Environmental Analysis Division ("MEA"), have determined that this
15 determination is adequate for the proposed surface barriers on the Ferry Plaza Platform; and
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17 WHEREAS, Before the Port issues building permits for BART's marine barriers, the
18 Port and MEA, in their sole discretion, must first determine that BART's CEQA determination
19 for the barriers is adequate; and the Bay Conservation and Development Commission must
20 also provide permit approval for the marine barriers; now, therefore, be it
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22 RESOLVED, That the Board of Supervisors approves the Cooperative Agreement;
23 and, be it
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1 FURTHER RESOLVED, That the Board of Supervisors authorizes the Executive
2 Director of the Port (the "Executive Director") to execute the Cooperative Agreement in a form
3 approved by the City Attorney; and, be it

4 FURTHER RESOLVED, That the Board of Supervisors authorizes the Executive
5 Director to enter into any additions, amendments or other modifications to the Cooperative
6 Agreement (including, without limitation, preparation and attachment of, or changes to, any or
7 all of the exhibits and ancillary agreements) that the Executive Director, in consultation with
8 the City Attorney, determines are in the best interests of the Port and City, do not materially
9 increase the obligations or liabilities of the Port or City or materially decrease the public
10 benefits accruing to the Port, and are necessary or advisable to complete the transactions
11 which the Cooperative Agreement contemplates and there under and effectuates the purpose
12 and intent of this Resolution, such determination to be conclusively evidenced by the
13 execution and delivery by the Executive Director of any the Cooperative Agreement, and any
14 such amendments or modifications thereto.

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